



**State of Tennessee**  
**Department of State**  
Administrative Procedures Division  
312 Rosa L. Parks Avenue  
8<sup>th</sup> Floor, William R. Snodgrass Tower  
Nashville, Tennessee 37243-1102  
Phone: (615) 741-7008/Fax: (615) 741-4472

**RECEIVED**

OCT 12 2009

DEPARTMENT OF  
FINANCIAL INSTITUTIONS

October 9, 2009

Commissioner Greg Gonzales  
Tennessee Department of Financial Institutions  
414 Union Street, 10<sup>th</sup> Floor  
Nashville, Tennessee 37219

Derek B. Church, Esq.  
Staff Attorney  
Tennessee Department of Financial Institutions  
414 Union Street, Suite #1000  
Nashville, TN 37219

Charles W. Welch, Jr., Esq.  
Farris, Mathews & Bobango, PLC  
618 Church Street, Suite #300  
Nashville, TN 37219

RE: In the Matter of: Arrow Financial Services, LTD., L.P. Docket No. 03.00-098489J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division  
Tennessee Department of State

/aem  
Enclosure

**STATE OF TENNESSEE  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
OFFICE OF THE COMMISSIONER**

**IN THE MATTER OF:**

**ARROW FINANCIAL SERVICES, LTD., L.P.**

**DOCKET NO. 03.00-098489J**

**ORDER**

THIS ORDER IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **October 26, 2009**.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION  
WILLIAM R. SNODGRASS TOWER  
312 EIGHTH AVENUE NORTH, 8<sup>th</sup> FLOOR  
NASHVILLE, TENNESSEE 37243-0307

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472**. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

**STATE OF TENNESSEE  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
OFFICE OF THE COMMISSIONER**

<b>DEPT. OF FINANCIAL INSTITUTIONS,</b>	)	
<b>COMPLIANCE DIVISION,</b>	)	
	)	<b>Docket No. 03.00-098489J</b>
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	
	)	<b>TDFI No.: 08-39-C</b>
<b>ARROW FINANCIAL SERVICES, LTD, L.P.,</b>	)	
	)	
<b>Respondent.</b>	)	

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**AGREED ORDER OF DISMISSAL**

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This matter is before Marion P. Wall, Administrative Judge, assigned by the Tennessee Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Financial Institutions (hereinafter, "Commissioner"). It appearing that the parties have agreed to resolve this case by entry of this Agreed Order, and that in support thereof the parties make the following representations, as evidenced by the signatures of their authorized representatives below:

1. This matter constitutes a "contested case" within the meaning of Tenn. Code Ann. § 4-5-102(3). Both the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101, *et seq.*, and the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies, Chapter 1360-4-1 of the Official Compilation Rules & Regulations of the State of Tennessee, are applicable to this matter.

2. This case was properly transferred to the Administrative Procedures Division for adjudication pursuant to Motion of the Tennessee Department of Financial Institutions Compliance Division (hereinafter "Division"), filed on April 3, 2008.

3. Tenn. Code Ann. § 45-1-104 provides that the Commissioner, through the Department of Financial Institutions (hereinafter, "Department"), is charged with the execution of all laws relative to persons doing or engaged in a banking or other business as provided in Title 45. Under that authority, the Commissioner is responsible for the administration, enforcement, and interpretation of the Deferred Presentment Services Act, as amended, Tenn. Code Ann. §§ 45-17-101, *et seq.* (hereinafter, "DP Act").

4. The Division is the lawfully designated representative through which the Commissioner regulates persons engaged in the business of deferred presentment services in this state.

5. Arrow Financial Services, Ltd., L.P. (hereinafter, "Arrow") is a Tennessee limited partnership whose principal office is located at One Commerce Square, Suite 2000, Memphis, Tennessee 38103. At all times relevant hereto, Arrow has engaged in business operations at 2757 S. Mendenhall, Ste. 3, Memphis, Tennessee 38115 (hereinafter, "Memphis Location").

6. The Department has never issued Arrow a license under the DP Act for Arrow's Memphis Location to engage in the business of deferred presentment services.

7. On or about February 29, 2008, and in response to a consumer complaint, the Division had two (2) of its compliance examiners conduct an investigation at the Memphis Location. As part of the investigation, the Division's examiners reviewed Arrow's business records, which included Payment Receipts, Payment Notices, customer checks, Bills of Sale, Personal Property Lease Agreements, an Overdue Collection log, and returned checks.

8. Upon review of Arrow's business records, the Division determined that, since at least May 2, 2007, Arrow had been engaged in the business of purchasing personal property from a customer and then leasing such property back to the customer for a fee and for a term that could be renewed at the customer's option (hereinafter, "Sale/Lease-Back Business").

9. The Division also determined that, pursuant to its Sale/Lease-Back Business, Arrow would accept two (2) checks from the customer, dated the same date as a transaction, to be held for a period of time prior to presentment for payment or deposit. One check would be in the amount of the sale price and would be described in the Personal Property Lease Agreement as a "Rental Deposit," and would be held and not presented for payment or deposit until such time as the customer might default on the Lease Agreement, while the other check would be in the amount owed for one (1) rental period, and would be held for possible presentment for payment or deposit at a later date.

10. Tenn. Code Ann. § 45-17-102(3) defines "Deferred presentment services" as "a transaction pursuant to a written agreement involving the following combination of activities in exchange for a fee...Accepting a check dated on the date it was written; and Holding the check for a period of time prior to presentment for payment or deposit."

11. Based on evidence gathered pursuant to the Investigation, the Division initiated this administrative action by Notice of Charges served on Arrow on or about March 17, 2008, alleging that Arrow's Sale/Lease-Back Business described above constitutes the business of deferred presentment services, and that Arrow engaged in such business without a license issued by the Department under the DP Act.

12. Arrow represents to the Division that, on or about the date it was served with the Division's Notice of Charges, or soon thereafter, it ceased holding checks pursuant to its Sale/Lease-Back Business, and instead began requiring customers to sign an electronic funds transfer authorization agreement whereby any charges allowed under the lease would be transferred from a consumer's checking account (or credit card) via automated clearing house debit.

13. It is the Division's position that Arrow's Sale/Lease-Back Business (the original model described above and as modified per paragraph 12), falls within the authority of the DP Act, or would alternatively constitute a transaction that violates the Industrial Loan and Thrift Companies Act compiled in Chapter 5 of Title 45 or the single payment loan statute at Tenn. Code Ann. § 47-14-104; however, it is Arrow's position that its Sale/Lease-Back Business (the original model and as modified) does not and never has fallen under the provisions of the DP Act, the Industrial Loan and Thrift Companies Act, or the single payment loan statute.

14. In the interests of cooperation, and to avoid further costs associated with administrative and judicial proceedings with respect to this matter, the Division and Arrow agree to settle this matter by Agreed Order.

15. In consideration of the representations and promises made by Arrow herein, the Division hereby agrees to cease and deem concluded its administrative action against Arrow, and for this matter to be dismissed by Judge Wall.

16. Arrow hereby represents that it is in the process of winding down its Sale/Lease-Back Business at its Memphis location, and that, more specifically, Arrow has ceased entering into new sale and lease-back transactions and that it is only renewing

previously made personal property leases, and that no such renewals will be made after December 31, 2009.

17. Arrow, without admitting or denying any wrongdoing, hereby promises and agrees that, henceforth, it will not conduct a Sale/Lease-Back Business (involving the holding of a check or an electronic funds transfer authorization agreement) in the state of Tennessee or with any Tennessee consumer (other than renewals as allowed by paragraph 16). Arrow is hereby advised to consult with the Division prior to operating any similar-type business to ensure that the Division would not find such business to require a license or registration issued by the Commissioner.

18. Further, Arrow hereby promises and agrees that it will not engage in the business of providing deferred presentment services without a DP license issued under the DP Act, as required by law.

19. It is understood and agreed to by the Division and Arrow that this Agreed Order constitutes a final settlement of any and all allegations referenced in the Notice of Charges or otherwise referenced herein pertaining to Arrow's Sale/Lease-Back Business, but in no way precludes additional proceedings by or on behalf of the Department for any violation of this Agreed Order, or for any acts and/or omissions not specifically addressed herein.

20. It is understood and agreed to by Arrow that, by entering into this Agreed Order, Arrow expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to challenge or contest the validity of this Agreed Order.

21. It is understood and agreed to by Arrow that, by entering into this Agreed Order, Arrow is permitting the Administrative Procedures Division and Judge Wall to enter this Agreed Order without further process. In the event that this Agreed Order is not entered for any reason, it will be of no force or effect for either party.

22. Based upon the foregoing agreement and representations, and for good cause shown to me,

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:**

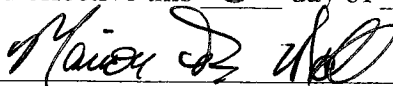
a. That, henceforth, Arrow shall not conduct a Sale/Lease-Back Business involving the holding of a check or an electronic funds transfer authorization agreement in this state or with any Tennessee consumer (other than renewals as allowed and provided for in paragraph 16);

b. That Arrow shall not engage in the business of providing deferred presentment services without a DP license issued under the DP Act, as required by law;

c. That the Division and Arrow shall strictly comply with all of the terms and conditions agreed to herein; and,

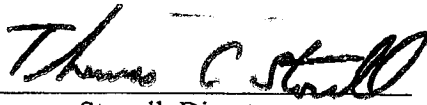
d. That, so long as Arrow is in compliance with and has not violated this Agreed Order, this Agreed Order shall represent the complete and final resolution of, and discharge with respect to, any and all administrative and civil causes of action the Division may have against Arrow with respect to the specific allegations addressed herein.

This Agreed Order **ENTERED** and effective this 8TH day of OCT, 2009.

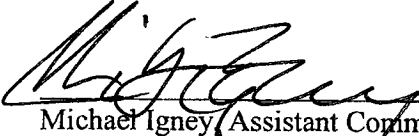
  
\_\_\_\_\_  
Marion P. Wall, Administrative Judge



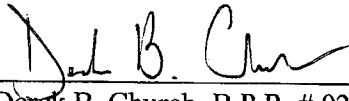
Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 8th day of OCT, 2009.

  
Thomas Stovall, Director  
Administrative Procedures Division


AGREED ORDER APPROVED FOR ENTRY:

  
Michael Igney, Assistant Commissioner  
Tennessee Department of Financial Institutions  
414 Union Street, Tenth Floor  
Nashville, Tennessee 37219  
Tele: (615) 741-3186  
Fax: (615) 532-1018

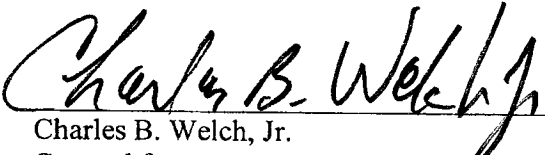
10-7-09  
Date

  
Derek B. Church, B.P.R. # 024946  
Staff Attorney and Drafter of this Order  
Tennessee Department of Financial Institutions  
414 Union Street, Tenth Floor  
Nashville, Tennessee 37219  
Tele: (615) 741-5961  
Fax: (615) 253-1875

10/07/2009  
Date

  
Duly Authorized Representative  
Arrow Financial Services, LTD, L.P.

9/21/09  
Date

  
Charles B. Welch, Jr.  
Counsel for Arrow Financial Services, LTD, L.P.  
Farris, Mathews, Branan,  
Bobango, Hellen, and Dunlap, PLC  
618 Church Street, Suite 300  
Nashville, TN 37219

10/07/09  
Date

## **APPENDIX A TO INITIAL ORDER**

### **NOTICE OF APPEAL PROCEDURES**

#### **Review of Initial Order**

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8<sup>th</sup> Floor, William R. Snodgrass Tower, 312 Eighth Avenue N., Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

#### **Review of Final Order**

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

### **YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER**

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.